Nos. 58-59

Supreme Court of the United States

OCTOBER TERM, 1963

A. L. MECHLING BARGE LINES, INC., ET AL.,
Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
Defendants-Appellees.

BOARD OF TRADE OF CITY OF CHICAGO,
Appellant,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and THE NEW YORK CENTRAL RAILROAD COMPANY, ET AL.,
Appellees.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

BRIEF OF McNABB GRAIN COMPANY, ET AL., DEFENDANTS-APPELLEES

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I.

DECISION BELOW

This is an appeal from a final judgment of a three-judge district court dismissing a complaint seeking to set aside an order of the Interstate Commerce Commission. The Commission's order, entered after hearing on the railroads' fourth section application, permitted the carriers to maintain rates which were lower in some instances for longer distances than for shorter distances over the same line or route.

II.

STATEMENT

A. Interest of These Appellees

The appellees, in whose behalf this brief is filed, are operators of small country elevators at stations west of Kankakee, Illinois, on the Kankakee branch of the New York Central Railroad (hereinafter referred to for convenience as the "Belt.") They buy and sell corn grown within approximately five miles of their elevators which is shipped to corn processors and others, and perform services such as are usually rendered by country elevators.

For many years these elevators were able to carry on normal elevator operations in their respective communities. However, with the improvement of the Illinois Waterway some 20 years ago, the inauguration of barge transportation thereon at low charges, the construction of numerous large elevators along the waterway by Chicago grain companies, and continuing increases in railroad rates to an unreasonably high level, the puissant Chicago interests were able to attract away from these appellees to their river elevators and barge transportation substantially all

of the corn tonnage that these appellees had handled for many years, thereby forcing the closing of appellees' elevators and discontinuance of rail shipments. As the Commission found (R. 27) they were then compelled to take on "the function of merchandisers employed at taking the corn off the farmer's hands and marketing it at the river." In the meantime, some elevators along the Belt were abandoned or fell into disrepair. (R. 777, 778) When, on December 15, 1956, the railroads finally established a reasonable level of rates to the East, appellees were able to reopen their elevators, resume operations, and obtain for themselves a portion of the corn that had been attracted away from them to the river.

These Appellees feel that if the Commissioner's order is invalidated the river will once again monopolize the corn business and force the small rail elevators out of business.

B. The Origin Area

The Kankakee Belt (formerly the Indiana, Illinois & Iowa Railroad Company) extends eastwardly to South Bend, Ind., and has connections east of Kankakee with every railroad operating out of Chicago to the East. For convenience, a map of the Belt (with highway distances ranging from 4 to 36 miles from its stations to the ten competing river ports superimposed thereon) is attached hereto as Appendix A. (Exs. 1, 2, R. 295). The record indicates that *beyond* Moronts there is no corn grown along the New York Central. (R. 370) The Belt is a line of low traffic density, serving a rural area in the Illinois corn belt. There are no cities or large towns west of Kankakee—Streator being the largest—and it serves very few industries. Because of the inroads made on its traffic by barge and motor truck in recent years, its business

has been "drying up." (R. 366) Many stations on the line have been closed and serious consideration had been given to abandoning the west end of this branch. (R. 298, 328, 355, 409)

The rates involved in this proceeding were published to apply from 17 stations on the Belt west of Kankakee, between Van's Siding and Moronts. Moronts, the most remote point, is on the river and four miles from the nearest river port of Spring Valley. As indicated on Appendix A, hereto attached, the river bends to the south at Moronts, and the Belt's rails run in the same general direction for about 10 miles before turning to the east.

The Mechling brief (p. 16) attempts to minimize the competitive pull at five of the ten river ports, stating:

> "* * * Lockport and Joliet were not affected by the reduced rate to the same extent as other ports (by reason of their distance from the Belt) and that from Hennepin, Henry and Lacon the predominant movement was south in the earlier period and to Chicago in the later period. * * *"

But its contentions are not sustained by the record. From Union Hill (by far the largest shipping point on the Belt and only 14.6 miles from Kankakee) the shortest distances to the river are to Joliet and Lockport, 31 and 35 miles, respectively. From Van's Siding, the shortest distances to the same ports are 32 and 36 miles. The shortest distance from Union Hill to Morris is 36 miles, and from Van's Siding, 35 miles. The distance from Reddick on the Belt to Morris is 31 miles. (Appendix A)

To say, as the Mechling brief does, at p. 38:

> "that Lockport and Joliet were too far removed from the Belt to be influenced much by the Belt operation"

is an attempt to depreciate the importance of the increasingly large corn tonnage shipped from Lockport and Joliet, and overlooks testimony of record that the river elevators draw corn grown within 40 miles of the river (R. 761), an area previously described in the Mechling brief (p. 14) as

> "• • • *the larger supply area required for the large operation of river elevators* • • • as compared to the small operations of railroad elevators shipping 50 tons in one rail car."

Appellants would likewise have it appear that the river elevators at Henry, Hennepin and Lacon (at the west end of the origin area) are not competitive with these railroad elevators on the Belt, but here again the evidence is to the contrary. The river elevators named are from 6 to 23 miles distant from the nearest Belt stations, while the shortest distance to the river from any Belt station east of Dwight is 25 miles. (Appendix A)

The operator of the Henry elevator on the river testified as to his competition from four Belt stations. (R. 718-720) There was no testimony from the Lacon and Hennepin elevators, but the operator of the Wenona elevator testified that the 220,000 bushels of corn he sold in each of the 1955-1956 and 1956-1957 years for river movement was sent to the ports of Lacon, Henry, Spring Valley, LaSalle or Hennepin in competition with the outlet of the New York Central. (R. 670-671) Witness Noder of the McNabb rail elevator testified to his competition with river elevators at Hennepin, Henry, and Lacon, among others, but mainly with Hennepin, Henry and Spring Valley. (R. 491, 492, 496.)

It is stated on page 16 of the Mechling brief that the predominant movement from Hennepin, Henry and Lacon was to the south in the earlier period (1956) and to Chi-

cago in the later period (1957.) The Commission's finding was that "the greater part of Mechling's corn business (from the three elevators named) moved to the south in 1956 and north to Chicago in 1957."

The Henry elevator witness said that while he makes some shipments to the South, the Chicago market is very important to him

> "because it gives us a continuing market where we always have an outlet; through the south, as I mentioned before, it is kind of an off and on proposition. At times you can move considerable volume that way, but there are quite a few times when you can't move anything." (R. 718)

The total river movement of corn from the ten competitive ports to Chicago 402,105 tons in the period December 15, 1955 to August 30, 1956 increased to 493,668 tons in the corresponding period the following year. (R. 28) It is indeed noteworthy that, in spite of the lack of rail competition to Chicago in 1956 and its existence in 1957, the preponderance of Mechling's corn tonnage should have moved to Chicago instead of to the South, as in 1956. This fact, along with the material increase in river-borne corn to Chicago from the ten competing ports, illustrates how little the fourth section rates have affected the river movement.

The flow of corn from the Belt area to river elevators of the large Chicago grain merchants has increased in recent years to awesome proportions, and new elevators of large capacity are continually being built along the waterway to take care of the ever-increasing river movement. Most of the river ports have two or more elevators. Morris, for example, has four, belonging to as many different Chicago companies. (R. 760) The predilection of the Board of Trade and its members for river transportation from

this area is indicated by the following statements of its chief witness, who also acted as counsel:

> "We have tremendous investments in Chicago, built upon the river and its low cost transportation, which gives Chicago an opportunity to utilize its natural advantages of being on the Great Lakes, on the inland waterways, as well as being able to be served by truck and rail." (R. 796)

and

> "* * * we have a real interest in grain that comes in by barge * * *." (R. 797)

Appellant, Mechling Barge Lines, Inc., (hereinafter referred to for convenience as "Mechling") as a water carrier of corn and other bulk freight, is exempt from all rate regulation by virtue of the provisions of Section 303 (b) of the Interstate Commerce Act. [49 U.S.C., Sec. 303 (b)] See *Mechling Barge Lines, Inc. Extension,* 306 I.C.C. 223, 225, wherein it is stated that along the Illinois Waterway, *inter alia,* Mechling "operates in the transportation of various commodities, in bulk, under the dry bulk exemption of Section 303 (b) of the Act;" and *Grain Proportionals Ex Barge to Official Territory,* 262 I.C.C. 7, at p. 19. It may also be observed in this connection that the Act (Section 203 (b) (6) similarly exempts motor carriers of corn and other agricultural products from such regulation. [49 U.S.C., Sec. 303]

Joined with Mechling in its appeal herein are five country grain dealers. There is no evidence concerning two of them, but testimony of the other three showed that their corn has been trucked for substantial distances to the river in the years prior to, and since, the rail competitive rates were established, notwithstanding the proximity of appellees' elevators to the sources of their corn and rail rates which appellants designate as "low." (R. 658, 651; 647, 640; 638, 634)

C. The Commodity Involved

Corn is an important agricultural product and the Commission is under the direction of Congress to effect such lawful changes in the rate structure of the country

> "* * * as will promote the freedom of movement by common carriers of the products of agriculture * * * at the lowest possible lawful rates compatible with the maintenance of adequate transportation service. * * *" (49 U.S.C., Sec. 55)

In *Increased Railway Rates, Fares and Charges*, 248 I.C.C. 545, 611, the Commission said:

> "Congress intends that agricultural products, including livestock, shall be afforded the lowest possible lawful transportation rates. The Hoch-Smith Resolution still is the law."

while, in *Grain and Grain Products*, 284 I.C.C. 723 (at pp. 737-738) the Commission observed that

> "Transportation of grain and grain products, storage and milling in transit, requires *complete freedom of movement.*" (emphasis supplied)

In carrying out the will of Congress the Commission has extended "leniency" of rate treatment not only to farm products, but also to commodities used by farmers, such as fertilizer and fertilizer materials, implements, etc. *Ohio Farm Bureau* v. *Ahnapee & W. Ry. Co.*, 120 I.C.C., at p. 370; *Boardman* v. *Atchison, T. & S.F. Ry. Co.*, 176 I.C.C. at p. 234.

D. Bidding for Corn by River and Rail Buyers

During the years when the river elevators and barge lines had a monopoly of the corn produced along the Belt, the price bid to farmers was the Chicago price less the rail (Illinois proportional) rate to Chicago (R. 526-527,

750) which ranged from 16.5 to 23 cents at Belt origins. (Ex. 61, p. 5, R. 815) With rail rates so high as to preclude rail shipments and the wide margin between those rates and the low barge charges, the Chicago grain interests were in complete control of prices to be paid the farmer as well as the mode of transportation to be employed. They need bid just enough under the "paper" rail rate to insure getting the corn for river movement, pay the low barge charge, and pocket the difference. The bids of the various Chicago buyers to the farmers at river elevators were identical.[1] Witness Noder of McNabb testified that during the period prior to publication of the fourth section rates he could not ship by rail because the rail rate

> "* * * was so high you just couldn't touch any corn going out of McNabb by rail. I know that." (R. 493)

and he had no outlet for his corn except the river elevators at LaSalle, Spring Valley, Hennepin, Henry and Lacon (R. 491)

With the taking effect of the competitive rail rates, marketing conditions in the area changed. Rail buyers entered the field and broke the monopoly of the Chicago grain companies. In this connection witness Graves testified as follows:

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[1] Witness Noder testified on cross-examination as follows:

"Q. With respect to river bids prior to this 5½ cent rate, how did you find a bid on a given day at these different points you referred to, were they approximately the same?

A. Just about all the time they were the same.

Q. So it would be fair to say then that the bid price at LaSalle or Spring Valley or Henry would be the same on a given day.

A. (Nodded.) (R. 498)

"Before December 15, 1956, the river elevators had no competition, but since that date the farmer has had a healthier situation in that he has had two markets for his corn; rail and barge. With the five and a half cent rate, competition between the rail and barge buyers was established. In my opinion this resulted in higher bids from barge buyers and rail buyers than would have been made if only barge buyers had been in the market." (R. 526)

Witness Noder also testified that farmers are benefited by the competitive rail rate "by the fact that their price is no longer determined by a single bid but by competition between several bids." (R. 490)

A number of appellants' witnesses complained because the entry of rail buying in the area forced them to make higher bids to the farmer in order to purchase corn for river movement. (R. 698, 676, 669, 665, 661, 657)

Witness Graves pointed out, however, that the buying advantage is still with the river buyers, and the uninterrupted and increasing flow of corn to the competing river elevators (despite the handicap in many instances of long trucking hauls from sources near Belt shipping points) abundantly confirms his testimony. The instances where Belt elevators have been able to obtain a share of the traffic were described by witness Cahill as those where it is 15 miles from his elevator to the river and "the producer only lives a mile from our elevator or 3 miles or something like that." (R. 478) The McNabb elevator witness gave as an additional reason why he is sometimes able to buy corn under the present rates is

"because we are a co-op and we pay a patronage dividend * * *." (R. 499-500)

E. Accessorial Services

The so-called accessorial expenses referred to in the record in this proceeding are those incurred by shippers for services not performed, or charged for, by either barge or rail carriers.[2] They are discussed in the Mechling brief (p. 13) but only as they occur in connection with barge shipments. However, the same services are performed, and to the same extent, in the case of all-rail shipments.

Corn is shelled at the farm and trucked either to a rail or river elevator, the expense of such trucking being borne by the farmer. (R. 490, 523) For equidistant truck hauls, the trucking cost[4] would be the same to either rail or river elevator. (R. 763) At the rail elevator, corn is weighed, graded, elevated into storage bins, and thereafter re-elevated to box cars, all of which services are comparable to those at the river elevators. (R. 524, 525, 565, 772, 778, 824) There is a trimming, or leveling, operation on both rail and barge corn, the cost thereof being borne by the elevator in either case. (R. 525)

Corn purchased for rail shipment is bought f.o.b. rail car, while river elevators customarily purchase corn for

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[2] A milling-in-transit charge of 1¼¢ per cwt., is assessed on shipments milled-in-transit at Indianapolis and other points east of the Illinois-Indiana state line under railroad tariff provisions. (R. 564, 784)

[4] A witness for appellants observed that it is unusual to consider trucking costs in a proceeding of this kind, but if such costs are to be considered as factors in determining the right of railroads to meet water competition, there is clearly no reason to consider them in connection with barge transportation and disregard them on the competitive all-rail movements. (R. 810)

river movement f.o.b. truck at the river elevator, *i.e.*, before unloading into elevator for transfer to barges. All corn, whether for rail or river, incurs similar expenses over and above the carriers' charges for transportation. (R. 523, 524, 525, 740, 763, 443, 463, 490, 721, 730, 749, 750)

Rail corn at Kankakee or Indianapolis must be elevated at those points in the same manner as barge grain is elevated at Chicago. (R. 828-829, 523, 570, 766) The Chicago grain firms have large elevators in Chicago in addition to those along the Waterway. The Illinois Grain Corporation witness testified that his company makes a charge of 2¼¢ per bushel for elevation at its Chicago elevator, which includes an element of profit, whereas the elevation performed at the rail points named is solely for account of the processors. Inspection is required at Indianapolis and Kankakee the same as at Chicago. (R. 828, 561)

The aggregate cost of the various accessorial services in connection with rail shipment was shown by the Kankakee witness to be 14.28 cents per cwt. The expense for corresponding services incurred on barge-rail movements was subsequently shown by the Cargill and Illinois Grain witnesses to be 13.65 and 13.3 cents, respectively. (Ex. 25, R. 525; 728, 755-756)

The following table shows the expenses listed by the witnesses for the barge-rail shippers as contrasted with those all-rail shown by the witness for General Foods Corporation:

Barge-Rail			*All-Rail*	
	Cunningham (cents per cwt.)	*McClintock* (cents per cwt.)	*Graves*	(cents per cwt.)
Truck to river	5.36	5.4	Truck to elevator	5.36
Transfer to barge	2.68	2.7	Transfer to car	4.46
Barge rate	4.95	4.4	Rail rate to Kankakee	5.5
Stevedoring	1.15			
			Elevation at Kankakee	4.46
Transfer to box car at Chicago	4.01	5.2	Rail rate beyond	53.5
Outbound Inspection	.45	—		
Rail rate	53.5	53.5		
Total	72.1	71.2		73.28

(R. 727-729; Ex. 39, R. 754; Ex. 25, R. 526)

Trucking cost to the rail elevator is concededly the same as for an equivalent haul to the river (R. 736) and elevation required at a country elevator the same as at the river. (R. 525, 740, 742) Corn is elevated at the Kankakee elevator the same as at Chicago or Indianapolis. (R. 523, 828-829)

The comparison of the rail bid at Missal and the nearest river elevator (referred to in the last paragraph on p. 15 of the Mechling brief) ignores the fact that corn must be trucked from farm to rail elevator and loaded into the carrier's vehicle the same as in the handling of corn to the river elevator. In discussing appellants' contentions, the Commission's report states:

"The belt bids, however, were f.o.b. trucks, after elevation; while the river bids were f.o.b. trucks, prior

to elevation into barges. By adjusting the bids to a similar basis for comparison, the river bids are seen to be higher on the average than the rail bids." (R. 20)

It is further stated therein:

"This elaborate Chicago Board of Trade proposal is defective in that it begins with the erroneous premise that the Belt bids during the comparison period were higher than river bids, when, in fact, they were not, since they applied to corn at different levels in the transportation chain. * * *"

Whether viewed from the standpoint of the bare transportation charges, barge-rail versus all-rail, or in the light of the ancillary expenses incurred by shippers plus the charges of the carriers, the evidence conclusively shows that the barge-rail movement enjoys a marked advantage over all-rail transportation.

F. Wasteful Transportation from the Origin Area by Barge and Rail Is No Longer Necessary

Prior to the taking effect of the fourth section rates, the only economic method of transporting corn grown along the Belt to the processing plant at Kankakee was as follows: trucking to a river port, barge to Chicago, transfer by switching lines to the NYC at Chicago, thence a road-haul movement of 75 miles to Kankakee, involving a transfer at Schneider, Ind., from the NYC's Danville branch to the Belt. (Ex. 29, R. 583) The Belt distance to Kankakee from Van's Siding is only 5.2 miles and from Union Hill, 14.6 miles, while the truck-barge-rail distances between the same points were in excess of 150 miles. (Ex. 56, R. 812; Ex. 29, R. 583)

In commenting upon appellees' exposition of the wasteful transportation involved, the Mechling brief (without a record reference) states at p. 29:

> "Another of the applicants had a more direct route to Kankakee, and most of the switching charges in Chicago were paid to the NYC's own subsidiaries. In addition, not all the corn shipped from the Belt was used at Kankakee • • • and routing from Chicago to Kankakee would not have been necessary on much of the remainder."

Exhibit 14 lists cars handled by Chicago switching lines and charges absorbed by the Central on the movements described. Contrary to appellants' statement quoted above most of the charges were not paid to NYC subsidiaries.[3] Moreover, the service performed and charges collected by subsidiaries were no different from those of the other lines whose charges were absorbed, and for some years the Central's switching subsidiaries have operated at a deficit of one and one-half million dollars annually, which it is required to assume. (R. 383)

Appellants' statement that "not all the corn shipped from the Belt was used at Kankakee • • • and routing from Chicago to Kankakee would not have been necessary on the remainder" is vague and incoherent. The page of the record cited (R. 802) refers to shipments from the Belt to Kankakee, Indianapolis and Paris. All such shipments would necessarily have to move via Kankakee, and there could have been no "routing from Chicago to Kankakee" on any of them unless they were forwarded from Kankakee to Chicago and subsequently back-hauled from Chicago to Kankakee.

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[3] Of 312 cars listed in the exhibit the CJ and CR&I (wholly owned subsidiaries of the Central handled 71 cars; the IHB (in which it has a majority interest) participated with foreign lines in the switching of 75 cars.

The Illinois Central (a Southern region railroad) has a shorter mileage between Chicago and Kankakee on its line to New Orleans, but this case involves only official (Eastern) territory and the ex-barge shipments previously referred to were moved from Chicago to Kankakee over the New York Central. (Ex. 14, R. 304-305)

G. Destructive Competition

Competition of these appellees for a share of the corn grown along the Belt tracks was completely destroyed several years ago due to very low barge rates and unreasonably high railroad rates. Appellees' elevators were forced to close and their elevator operations ceased until the reduced rates became effective. These facts are abundantly proved by the witnesses for these appellees.[4]

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[4] Witness Gibbons (with elevators at Sunbury on the Belt and Nevada, Ill., on the Gulf, Mobile & Ohio Railroad, testified as follows:

Q. During the period 1954 through 1956, how many carloads of free corn were shipped via the New York Central?

A. None.

Q. During this period did you cease the commercial elevation of corn?

A. Yes, we ceased it because the prices at the river elevators dictated the corn to be trucked directly to the river." (R.443)

Similarly, Witness Cahill of Budd, Ill., on the Belt, testified:

Q. Since your company is located on the New York Central, has it been your practice in the past to ship most of your corn via that railroad?

A. No. While it would seem logical that we ship our corn via the New York Central, the fact of the matter is that until December of 1956, we were unable because of the high freight rate, to do so. During the entire period 1954 through 1956, we shipped only 20 cars of free corn. There

The witness for the Illinois Cereal Mills at Paris, Ill., stated that in the three year period 1954-1956 he bought 2 cars of corn in the Belt area. His grain department "claimed all the corn went to the low barge rate to Chicago. Of course there was no corn offered to us." In the first 8 months of 1957 after the fourth section rates went into effect, he bought 327 cars of corn for rail movement. (R. 515, 516)

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were many months during which we made no rail shipments of corn at all. We could afford to ship by rail only when the river elevators were not making us a bid. The rail bids were so low that they afforded no competition whatsoever to the river bed." (R. 462)

Witness Noder, operating the elevator at McNabb, testified to the same effect, as follows:

"Q. During the period 1954 through 1956, did your company elevate corn for shipment via the New York Central?

A. No free corn. The freight rate was so high during this period that we could not afford to ship our corn by rail. So far as corn was concerned, we became merchandisers. We purchased corn from the farmers for delivery and elevation at the river elevators. * * *" (R. 489)

Operators of other country elevators off the New York Central also testified that their corn was similarly handled. Thus, the witness for the appellant Essex elevator stated:

"Q. Can you tell me how much of the 177,000 bushels you handled during the first eight months of 1956 moved to the river?

A. All of it." (R. 710)

The witness for the Gardner elevator, another appellant, testified:

Q. What percentage of the 198,000 bushels that you handled during the first eight months of 1956 moved direct

Witnesses for other corn processing firms, who are presently shipping on the competitive rail rates, also made it plain that prior to the publication of a reasonable level of rail rates from the area involved, they made no shipments of corn by rail from origins on the Kankakee branch. The witness for General Foods Corporation at Kankakee testified as follows:

"Q. In recent years, have you been able to buy any substantial amount of corn from elevators along the New York Central for rail delivery to your plant?

A. Not until December of 1956, at which time the New York Central established a rate that permitted us to enter that market again.

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from the farm to the river without being elevated through your elevator?

A. Well, I would say 98 or 99 per cent.

Q. So therefore 98 or 99 per cent of the business that you handled in 1956 you handled as a merchandiser, is that correct?

A. Yes, sir." (R. 704)

The testimony of the appellant Mazon elevator witness was to the same effect:

"Q. What percentage of the 467,000 bushels your elevator handled during the first months of 1956 moved via the river?

A. What percentage of it? All of it. (R. 697)

Q. Is that same thing true for the 1957 period?

A. Right." (R. 698)

The witness for the Farmers Grain Dealers Association testified:

"It is our observation that the rail carriers in this general area have been losing an increasing volume of corn year after year to truck and barge competition. We believe the affected railroads should seek a level of rates that would be competitive with the truck-barge cost of transportation." (R. 714)

Q. Have you bought corn from this area continuously since December of 1956?

A. Yes, except that we were forced to go out of that market in September, 1957, after the five and a half cent rate was enjoined. However, we are now back in the market. * * *" (R. 522-523)

The witness for Evans Milling Company of Indianapolis and the Indianapolis Board of Trade likewise stated that he had purchased corn for eight months in 1957 and since the temporary injunction was lifted, in 1957 and 1958. He then testified:

"Q. Now prior to December 15, 1956, did you make any purchase of rail corn from the west end of the Kankakee belt?

A. Evans Milling Company received no corn for the fifteen years prior to that time from any of these states." (R. 558)

III.

ARGUMENT.

A. Summary

As the rates involved are through combination rates from Belt origins to Eastern destinations, the Commission considered the total combination rates in its consideration of the rates within the meaning of the fourth section. The Commission did not consider the six cent proportional rate as that rate standing alone presents no fourth section problems. The form and construction of the through rates in question conform to the provisions of the statutes of the Commission's tariff rules. In view of the plain and unequivocal language of the fourth section of the Interstate Commerce Act, and consistent with its determinations extending back almost from its very beginnings, the Commission held that it is the aggregate charges for transportation from point of origin to final destination that must be considered and not a segment thereof.

The Commission's finding that the through combination charges from point of origin to point of destination are reasonably compensatory is amply demonstrated in the record by the liberal earnings yielded by the all rail rates; the rate comparisons of record. While the six cent proportional rate is not considered by itself for the reason that it is no separate existence, it should be noted that the average distance to Kankakee from the stations west thereof was but 4.4 percent of the entire haul and that six cent proportional rate accounted for 15 percent of the through charges.

The competitive combination rates which permit corn to move through the elevators of these appellees has a salutary effect on the revenues of the railroads. Under the prior non-competitive situation, the corn was forced to the

river where it was transported to Chicago by barge for transfer to rail cars in Chicago for movement south to Kankakee. The rail haul from Chicago to Kankakee for a distance of 75 miles involved the handling through congested and costly Chicago terminals as contrasted with the simple and inexpensive movements of corn for an average distance of 38 miles from the rural elevators west of Kankakee to Kankakee. The railroads avoided switching absorptions at Chicago, reduced their operating expenses, and obtained additional revenue as a result of the all rail handling.

While appellant Mechling argues that the rates are shown by cost evidence to be noncompensatory, that evidence was not found by the Commission to correctly state the rail costs.

The Commission's finding that the rates are no lower than necessary to meet competition is amply supported in this record and is extensively discussed by the Commission. The Commission's finding that the rates are not lower than necessary to meet competition is supported by the undisputed fact that the barge rail route increased its business during the time the rail route and the small country elevators obtained a relatively meager share of the business.

Under the Commission's order setting the railroad's application for a hearing and prior Court and Commission precedent, the Commission is not required to decide the lawfulness of rates under other sections of the Act in a fourth section investigation. However, even if it were required to make such a finding, there is no evidence of discrimination under Section 3(1) of the Act.

Moreover, the rates involved here do not discriminate against the barge carriers at Chicago. Section 4 appertains to direct routes only and the direct route from Kankakee origins to eastern destinations is not via Chi-

cago. As a matter of fact, the reshipping rates from Chicago and Kankakee are equal in amount. Substantially all of the traffic handled on the combinations involved moves to the East through Kankakee and not via Chicago.

The rates do not violate the National Transportation Policy. The Commission correctly and specifically found that barge carriers are not entitled to have their rates protected from a competing mode of transportation where the effort to secure traffic does not amount to destructive competition. That finding fully conforms to the National Transportation Policy and is supported by the evidence which shows that the rates are not lower than necessary to meet competition and that the barge movement of corn to Chicago continues to dwarf the modest rail movement through the country elevators along the Kankakee Belt Line.

B. The Fourth Section Rates Are Through Combination Rates From Belt Origins To Eastern Destinations

Although carriers' fourth section application (R. 138) sought

> "• • • authority to continue or to establish and maintain over their existing direct all-rail routes for the transportation of **corn products from origins** in northern Illinois **on** that part of the New York Central Railroad's **Kankakee Belt Line** extending eastward from Moronts to Van's Siding, Ill., both inclusive, **to points in central, trunk line and New England territories,** rates composed of a combination of proportional rates to and from Kankakee, Ill., as hereinafter described • • •." (R. 10). (*Emphasis supplied*).

The Mechling and Government briefs deal with a proportional rail rate of 6 cents to Kankakee.

The 6¢ proportional rate to Kankakee, as the Commission's report indicates, (R. 25) is one of the factors of

the through combination rates, but standing alone it presents no fourth section problem. Fourth section departures only occur when the outbound proportional from Kankakee is combined with the 6¢ factor. The latter is never collected as a separate charge, but enters into the computation of the through charges only after a shipment is forwarded to, or delivered in the form of corn products at, a destination in Eastern territory. In the interim, the full local rate to the milling point (whether it be Kankakee, Indianapolis, Danville or Paris) is collected and retained until reshipment occurs, at which time settlement of the through charges is made on the basis of the inbound proportional to Kankakee plus the reshipping rate beyond. (R. 756)

The form and construction of the through rates in question conform to the provisions of the statute and the Commission's tariff rules. [49 U.S.C., Sec. 6] As this Court pointed out in *St. Louis S.W. Ry. Co.* v. *United States*, 245 U.S. 136, 139:

> "A 'through rate' is an arrangement, express or implied, between connecting railroads for the continuous carriage of goods from the originating point on the line of one carrier to destinations on the line of another. Through carriage implies a 'through rate.' This *through rate is not necessarily a 'joint rate.' It may be merely an aggregation of separate rates* fixed independently by the several carriers forming the 'through route'; as where the 'through rate' is the 'sum of the locals' on the several connecting lines or is the sum of lower rates otherwise separately established by them for through transportation." (emphasis supplied)

The inbound proportional rate to Kankakee—as an integral part of the through rate—was defined by one of appellants' own witnesses, as follows:

> "• • • The 5½ cent per hundred rate that has been referred to here is not actually a 5½ cent rate to

> Kankakee or Chicago. It is conditioned on the grain moving east, and our experience in the early part of the application of this rate was that it had to be milled in transit, and it had to be moved to trunk line territory, eastern seaboard territory. So really what we should be talking about, what is the cost to get grain to New York City, which is a representative point in the trunk line territory, by these various competing lines." (R. 756)

Section 4 (1) of the Act prohibits a common carrier from charging or receiving

> "any greater compensation in the *aggregate* for the transportation of * * * like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance * * *: Provided, That upon application to the Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances * * * but in exercising the authority conferred upon it in this proviso, the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory * * *."

In view of the plain and unequivocal language of the statute above quoted, the Commission properly held that the 6¢ proportional to Kankakee

> "has no independent existence, but is an integral part of the rate which applies on the through transportation from Belt origin, through the milling-in-transit point, to delivery of the corn product at its ultimate destination." (R. 25)

In decisions of the Commission in other cases, extending back almost to its very beginnings, it has been repeatedly held that, in determining whether or not a fourth section departure exists, the aggregate charges for the transportation from point of origin to final destination must be con-

sidered and not a segment thereof. *Sheldon Axle & Spring Co.* v. *Lehigh V. R. Co.*, 53 I.C.C. 43, 44; *Board of Railroad Commissioners* v. *Atchison, T. & S. F. Ry. Co.*, 34 I.C.C. 111, 113; *Detroit Board of Trade* v. *Grand Trunk R. Co.*, 2 I.C.R. 199, 202.

C. The Rates Involved Are Reasonably Compensatory

1. Liberal earnings yielded by the all-rail rates.

The record indicates that the major portion of the corn transported under the fourth section rates moved to the Kankakee elevator of General Foods Corporation for milling and subsequent reshipment to destinations in the East. Data introduced in evidence by a witness for that company showed that on all shipments made in the first eight months of 1957, the weighted average earnings were $448.42 per car and 50.69 cents per car mile for an average weighted distance of 884.7 miles from all origins to all destinations. Shipments of the Indianapolis shipper (Evans Milling Company) were likewise shown by its witness to have produced revenue of $407.38 per car and 61.62 cents per car-mile for somewhat shorter hauls from Belt origins to eastern destinations, the average weighted distance having been 661 miles. (Ex. 28, R. 582; Ex. 26, R. 564)

The earnings cited above compare favorably with the average revenue of the Central and all Eastern railroads on all freight traffic. The average freight revenue per car-mile on all traffic handled by the Central was shown to be 48.015 cents, and for all 53 railroads in the Eastern District, 50.854 cents. The average hauls which produced the latter earnings were only 236.58 and 196.68 miles, respectively. (R. 152) Notwithstanding that average distances on all freight traffic are materially shorter than those here involved, and the well-recognized principle that the longer the haul the lower the revenue per mile (*Harvard Co.* v. *Pennsylvania Co.*, 4 I.C.C. 212), the

earnings derived from the fourth section rates are appreciably higher. Appellees cited many decisions of the Commission in fourth section cases, in which relief was granted on a showing of much lower earnings than those indicated here. *Dried Beans to W.T.L. and Ill. Territories,* 298 I.C.C. 527, 529; *Ethylene from Orange, Texas,* 299 I.C.C. 61, 63; *Iron and Steel Billets to Cleveland,* 296 I.C.C. 103, 105; *Coal from Western Trunk Line and Southwest to Twin Cities,* 293 I.C.C. 71, 77. The following language from the Commission's report in the case last cited, is pertinent here:

> "The proposed rates, as stated, would yield minimum revenue of 31.4 cents a car mile over routes in excess of 800 miles. The record is convincing that they would be reasonably compensatory. The *rates are vitally important to the affected coal mines, and essential to the recovery by the railroads of some of the traffic which has been lost to rail-barge competition.* Clearly, the proposed rates are not lower than necessary to meet the competition, and there is no substantial evidence that they would constitute an unfair competitive practice." (emphasis supplied)

2. Rate comparisons

The railroads also showed that the rates in issue were materially higher than export rates in effect from the same origins west of Kankakee to points in the East. For example, the rate to New York exceeds the export rate to that city by 5 cents per cwt., and to Boston by 7 cents per cwt. (R. 23) The Commission has frequently held that there is no reason under the statute why domestic rates should be any higher than export rates. *Oklahoma Millers Asso.* v. *Alabama & V. R. Co.,* 102 I.C.C. 1, 2; *Import Iron & Steel from Gulf Ports,* 115 I.C.C. 373, 375. The sufficiency of the export rates is unquestioned here.

The Docket 28300 first class rates prescribed by the Commission after long investigation were shown to be fre-

quently employed in other cases to test the compensativeness of grain rates, *e.g., American Barge Line Co.* v. *Alabama G.S.R.Co.*, 306 I.C.C. 167. The railroads showed that the combination through rates involved here reflect averages of 14.4 and 13.1 per cent, respectively, of the first class rates referred to from the west end origins to Eastern points on the one hand and from Chicago on the other. (Ex. 16, R. 305) Applicants also compared the percentage relationship of these fourth section rates to the same Docket 28300 first class rates with that of rates on grain approved by the Commission in *Export Grain, Ex Lake from Buffalo to New York*, 292 I.C.C. 647. The instant rates were shown to be from 12.3 to 17.9 per cent of first class while those approved in the case cited ranged from 6.3 to 9.5 per cent of the class rates. (R. 306, Ex. 17)

3. The 6¢ proportional produces more than its share of the through revenue

In their showing of revenues produced by their shipments, the Kankakee and Indianapolis shippers indicated that, for the initial movement to Kankakee on the inbound proportional, the former's shipments yielded $66.07 per car and $1.685 per car-mile from all origins for average weighted distance of 39.21 miles, while those of the Indianapolis firm from all origins to Kankakee produced revenue of $59.42 per car, and $2.38 per car-mile for an average weighted haul of 24.95 miles. (Ex. 27, R. 581; Ex. 26, R. 563)

It will be noted from the data as to the through shipments previously stated herein and those cited above, that while the *average distance to Kankakee was but 4.4 per cent of the entire haul*, the inbound proportional *accounted for 15 per cent of the through charges* on the Kankakee processor's shipments, while on the Indianapolis shipper's movements the inbound factor to Kankakee produced 14.5

per cent of the aggregate revenue although involving less than 4.5 per cent of total haul.

D. The Competitive Rail Rates Have Increased the Net Revenues of the Railroads.

The argument (Mechling brief, pp. 27-30; Government Brief, p. 34) that the reduced rates did not increase the revenues of the applicant railroads is made in disregard of the evidence.

During the years when unreasonably high rates prevented the rail movement of this corn to eastern destinations, the transportation services necessary to move corn from the origin area to Kankakee was complex and exceedingly costly for the railroads. Instead of being trucked a mile, or two, or five, from farm to a railroad elevator, corn had to be trucked as far as 40 miles to a river elevator. Union Hill, the largest shipping point on the Belt, is only 14.6 miles from Kankakee, but 31 to 36 miles to the nearest river elevators, so that when corn reached the river it was more than twice as far from Kankakee as it was at the starting point. After a barge haul to a Chicago elevator, the corn was loaded into a railroad car and switched to the New York Central by one or more switching roads, at an average cost to the Central of $23.10 per car. (Ex. 14, R. 304-305)

The outbound movement of this ex-barge corn by rail for the 75 mile haul from Chicago to Kankakee involved handling in and through congested and costly Chicago terminals and a transfer at Schneider from the Danville branch to the Belt. The complexity of this movement was detailed by the railroads' operating witness (R. 400-403) who epitomized his testimony concerning it, as follows:

> "However, on corn originated at Chicago, there are numerous inter-train, intra-train and interchange switches involved, all of which make that a more difficult operation than the Kankakee Belt movement."

The handling of traffic on the Belt under the competitive rates was detailed by the same witness, and shown to be a simple operation involving no additional train service or special services. (R. 405-408) In an earlier case, involving a local rate from Kankakee and handling on the Belt (*Corn Grits from Kankakee*, 237 I.C.C. 413, the Commission pointed out that the rate applied

> "over a route of low traffic density, over which the traffic could be handled without additional train miles, as contrasted with the present joint rates from producing points in northern Illinois and Indiana to Battle Creek which apply over a longer route of high traffic density through Chicago * * *."

The railroads' traffic witness showed that the railroads now have additional revenue of $80 to $85 per car (for the through movement) over that previously received for handling ex-barge corn via Kankakee. An additional advantage is that the weighted average haul to Kankakee is only 38 miles, as compared with the haul of 75 miles from Chicago. The connections of the Belt are also benefited by receiving shipments at interchange points on the Belt east of Kankakee, since it substantially reduces the length of the haul that otherwise would be required from Chicago, and avoids interchange and complex handling in the congested Chicago district.

The statement in the Mechling brief (p. 29) that all barge corn received at Chicago goes "east by rail, and applicants would have the revenue from the reshipping rate in any event "is incorrect. During 1956, Chicago received 98,037,000 bushels of corn via all modes of transportation and from all sources, including 26,210,000 bushels by barge. The total outbound movement by rail to all destinations in every direction was 37,125,000 bushels, of

which 23,748,000 bushels moved east, leaving 60,912,000 bushels of the total receipts for movement on the Great Lakes and local consumption. (Exs. 44, 45, R. 796-797, 835)

Mechling implies that the Belt should not compete with the river for this corn, (even though the Belt and appellee elevators had been operating for many years before the advent of barge transportation on the Illinois River) so that the barge lines and the river elevators might again have a monopoly in the purchase and shipment of corn.

E. Evidence Relied On By Appellant Mechling Does Not Show That the Rates Are Not Reasonably Compensatory

To meet the requirements of the statute, the applicants offered a great deal of evidence showing that the rates in issue were reasonably compensatory. Nowhere in these proceedings has it been contended by parties opposing the granting of such relief that the "aggregate" compensation, with which Section 4 is concerned, is not compensatory, and Mechling (on p. 22) seemingly concedes it.

Appellants on the other hand submitted no evidence bearing upon the question of reasonable compensativeness of the through charges, but argue that the 6 cent factor to Kankakee is too low based on a study purporting to show costs from Belt stations to Kankakee (Mechling brief pp. 8, 20, 30); (Government brief pp. 13, 14). It is there argued that a higher cost was shown for moving corn on the inbound proportional to Kankakee than the amount of the rate. The study, however, is not based on actual operations or statistics of the Belt (R. 606) but, as indicated in the Commission's report (R. 25), is a study of average costs (1) of the New York Central System (a vast net-work

of lines spread over the eastern half of the United States from St. Louis and Cairo, Illinois to the Atlantic Seaboard and projected into southern West Virginia and Canada); and (2) of territorial average costs of all eastern district railroads, which serve the same and additional areas in the middle Atlantic states and New England, including many great cities like Philadelphia, Baltimore, Washington and Norfolk, not reached by the Central. Just how such average costs covering, among others, expensive tunnels and bridges, mountains to be crossed, car floats, piers, wharves, huge warehouses, stations, valuable rights of way in large cities, etc., have to do with the cost of performing what the record shows is a very simple service over level terrain in the rural area between Moronts and Kankakee, is not made to appear. As well average the hut of Caractacus with the marble palaces of Rome, or learn the taste of rabbit with a one horse-one rabbit recipe. However, even if it were possible to obtain proof of the actual cost of moving corn to Kankakee, which these appellants emphatically deny, it would still be without probative value here because, as the Commission stated, (R. 25) "it deals only with the inbound proportional" and the statute explicitly requires consideration of the aggregate charge.

The statement (Mechling brief, p. 32) regarding

> "* * * the Commission's casual finding that, although Mechling had fully distributed costs approximately 10¢ per cwt. less than those of the NYC,"

is a distortion of the language in the Commission's report. What the Commission said was:

> "*According to Mechling,* this difference of 10 cents represents its inherent low cost advantage which must be preserved." (R. 26)

The evidence relied on by applicants in this case was voluminous and substantial, and of the kind ordinarily submitted in fourth section cases. The language quoted also presupposes that railroad costs are ascertainable just as are the costs of a gas or power company, or a barge line. Regardless of the amount expended for such an undertaking, it would in final analysis be nothing more than an average of system-wide or territory-wide statistics covering the vast and widely divergent area between the Atlantic Ocean and the Mississippi River, with all the variables and assumptions it would entail. Since the Government's brief, in this connection, deals only with a very minor portion of the entire haul, the cost study it has in mind for the railroads would also probably be limited to that factor alone. Its criticism of the applicants for not having made a cost study would seem to imply that it, too, has little faith in the one introduced by appellants.

After stating on page 35 of its brief:

> "Although it may well be true that the rail carriers reduced their *losses* by encouraging transportation from Belt origins to Kankakee in place of shipments from Chicago to Kankakee (after carriage by barge from the Belt origins) * * *

the Government says in the footnote thereto:

> "The argument assumes that all the corn being transported along the Belt under the proposed rate would otherwise have been shipped to the East via Kankakee. The record fails to support this assumption."

The reference to "losses" and "loss" is repeated on the following page, but the witness said nothing about losses. *Per contra*, it was stated that the amount named was "additional" or "added" net revenue. (R. 305) The

statement in the footnote is also incorrect, for out of a total of approximately 1900 cars of free corn moved from origins on the Central only 20 cars moved to Chicago (R. 384) and there is nothing in the record to indicate that any of them moved east, or moved on the competitive rail rate. The saving (in addition to that noted above) results from transporting traffic to the East via a direct route instead of sending it over a circuitous and costly barge-rail route through the congested Chicago district.

F. The Rates Are No Lower Than Necessary

1. Rates are no lower than is necessary to meet barge-rail competition

The suggestion (on p. 13 of the Mechling brief) under the foregoing caption that

> "* * * the 5½¢ rate was much more of a reduction than was required to meet water competition and would in time eliminate water competition from the area."

is entirely without foundation in the record.

It is conceded by the barge interests and their shippers that substantially all of the corn grown along the New York Central had been attracted away from the railroad to river transportation in the period between the improvement of the Waterway and the taking effect of competitive all-rail rates to the East. (R. 795). The latter were made effective after consultations with elevator operators, corn processors, and other potential rail shippers, but only after full consideration of the rates by all Eastern and Illinois railroads under procedures sanctioned under Section 5a (49 U.S.C., Sec. 5b). The proposal was publicized to "all the shipping trade" but not one opposed it before those rate committees. (R. 368)

The competitive rates did not return to these rail elevators, or to the railroads, all of the corn that had been

attracted away from them for river transportation, nor was it expected that they would. The rate advantage of the competing barge carriers has been too great, and the fields from which corn can be drawn for rail movement too restricted. The new rates produced not a single carload of corn from some stations, such as Moronts which is located on the river, and the record contains examples of trucking corn to the river for 20 miles and more from towns on the Belt and other nearby locations. (R. 649-650, 707, 711)

Statements made in appellants' briefs concerning the drastic effect of the revival of railroad competition from stations west of Kankakee are entirely without foundation. While the competitive rates did result in returning several hundred cars of corn that had been lost to the river, the important and undeniable fact is that barge shipments, from the ten competing ports in the origin area involved, also increased substantially during the period in 1957 when the competitive rail rates were in effect.

The record is replete with examples of the advantage which barge transportation has over rail movements from this territory, due to lower transportation charges and the ability of the great Chicago grain concerns to influence the flow of corn to their elevators at the competitive river ports.

Despite overwhelming proof to the contrary appellants persist in asserting that the 6-cent rate is lower than necessary to meet competition (Mechling brief, p. 37) The alleged drop in river elevator receipts and the persistently higher bids at Belt elevators than at river elevators are purely imaginary. The difference in bids, results from the river buyer's practice of buying grain f.o.b. on truck at the river whereas grain for rail shipment is bought f.o.b. on cars at point of origin. Unloading corn from truck to elevator and elevating it into box cars is no different than

the operation of getting corn from truck to barge at the river. (R. 525-526)

The appellants' testimony as to an alleged decline in tonnage at river elevators covered only three of the ten ports in the competitive area, namely, Morris, Ottawa, and Spring Valley, but even the volume handled at those ports shows no drastic drop in 1957 from 1956, as is indicated by the following data from Exhibit 19 (R. 307):

1956 (bushels)	1957 (bushels)
8,380,465	8,327,464

The slight difference of sixty-three one-hundredths of one per cent (0.63%) could have been due to the transfer of tonnage to one of the new elevators which had been built at Seneca and Lockport just before these rail rates were published (R. 746-747) or to an established river elevator at one or more of the other ports. If it were in fact lost to rail transportation, the difference is so infinitesimal as to be lost in the very substantial increase in barge tonnage to Chicago from all ten competing ports.

Mechling's claim that these rail rates are lower than necessary to meet barge-rail competition is negated by the following cogent facts:

(a) Shippers who are now using the fourth section rates for a portion of their corn requirements (but who also have continued to buy ex-barge corn in substantial quantities) have made it plain in their testimony that they will not ship corn on the fourth section rates if there is any increase whatever in the rates. (R. 527-528)

(b) The present rail rates have failed to attract any of the corn from some nearby fields which for years has been trucked past the Belt's shipping facilities for long distances to the river. (R. 707, 700)

(c) A large part of the corn that has been shipped by rail originated at Union Hill and other points near Kankakee and at some distance from the river. Moronts on the river was unable to attract any shipments for all-rail movement. (R. 378, Ex. 13)

2. River buyers are able to outbid the all-rail shippers

The statement (on p. 11 of the Government's Brief) that rail buyers are able to outbid grain dealers shipping by barge is contrary to the evidence of record and the Commission's finding.[5] Conceivably the Government misunderstood the evidence. The record shows that during the years when high rail rates gave river elevators a monopoly of the corn grown along the Belt, their bids to the farmer were made on the basis of the Chicago price less the transportation cost to Chicago. The amount deducted for transportation, however, was not the actual shipping cost, *i.e.*, the barge charge of 4.625 cents per cwt., but the "Illinois proportional" a "paper" rail rate ranging from 16½ to 23 cents. This fictional device, while profitable to the river buyer, was unfair to the farmer selling the corn. When the reduced rail rates to the East enabled rail buyers to enter the bidding for this corn, their bids reflected the actual transportation charge and not a concealed profit for themselves. As a result the farmer began to receive 3 or 4 cents per bushel more than he had been getting from the river buyer. This may have led to the Goverment's misunderstanding of the situation. When the river buyers learned that farmers were getting more for their corn they immediately raised their own bids to a level higher than those of rail buyers, and the Commission so found in its report. (R. 17)

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[5] Rivers buyers make their bids f.o.b. trucks at river elevators whereas rail buyers' bids are made f.o.b. in box cars, that is, after corn has been unloaded from trucks in rail elevators and elevated into railroad cars at the farmers' expense. (R. 15)

G. The Commission is Not Required in a Fourth Section Investigation to Decide the Lawfulness of Rates Under Other Sections of the Act

Section 4(1) provides

> "* * * That upon application to the Commission and after investigation, such carrier, in special cases, may be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property, and the Commission may from time to time prescribe the extent to which such designated carriers may be relieved from the operation of the foregoing provisions of this section, but in exercising the authority conferred upon it in this proviso, the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and no such authorization shall be granted on account of merely potential water competition not actually in existence * * *."

There is nothing in the language above quoted which places upon the Commission the burden of determining the lawfulness of the rates under other sections of the Act. Section 4 (1) forbids the granting of relief where the charge to or from the more distant point is not reasonably compensatory, and also where relief is based on potential water competition not actually in existence. If a special case has been shown, there are no other requirements, and no other restrictions upon the Commission's authority to grant relief, as this Court held in *United States* v. *Merchants & Manufacturers Traffic Association*, 242 U.S. 178, 188. See also *Seatrain Lines, Inc.* v. *United States*, 168 F.Supp. 819, 824; *Koppers Company* v. *United States*, 132 F. Supp. 159; and *Florida Citrus Commission* v. *United*

States, 144 F.Supp. 517, where the Court in each instance adhered to the holding of this Court in the *Merchants & Manufacturers* Case, *supra*. The *Intermountain Rate Cases*, 234 U.S. 476, cited by appellants, involved the preference of shippers at the more distant points and discrimination against shippers at intermediate points, which are prohibitions expressly declared in Section 4.

Appellants were advised by the Commission on several occasions prior to the hearing in this case of their right to present for determination in investigation or complaint proceedings the issues outside the scope of Section 4 which they desired to raise. Thus, appellants were fully advised several months before the hearing that the issues would be limited to those arising under Section 4 of the Act, but chose to disregard the Commission's delineation of the scope of its investigation in this case. Appellees and, presumably, the public at large relied on the Commission's pronouncement that the only issues involved were those under Section 4.

H. There Is No Discrimination

Appellants and the Government patently misconceive the scope and purpose of Section 3(1) of the Act as it applies to the facts in this case. The Commission properly found that no discrimination results from the rates here involved, as they apply via Chicago and every other point in official (Eastern) territory, and Chicago has the "same stature" under the tariffs as all other points. (R. 27) What the Board of Trade proposed, and the Government supports in its brief, is not "equality" but new and extraneous tariff provisions which, if established, would create "discrimination, favoritism and inequality" in favor of Chicago. The facts of record and the decisions, as we shall demonstrate, give no support whatever to appellant's contentions.

1. The milling-in-transit requirement in the Fourth Section Tariffs.

The Board of Trade states (p. 12) that its "major contention" is

> "that the milling-in-transit requirement discriminated against Chicago by restricting the reduced rates so that they would not apply on whole corn, thereby excluding Chicago grain interests from the source of supply of corn along the Kankakee Belt line and making it a private buying preserve for the Kankakee processors and a few other processors who could route their corn through Kankakee."

While it might be inferred from the language quoted that the restriction in the tariffs against whole corn only applies to Chicago, the fact is that no whole corn rates are published in the tariffs and no fourth section relief was sought with respect to them. Since there is absolute equality of treatment as between all shippers, the charge of discrimination cannot be sustained. As the Board of Trade's proposal would involve the establishment of new rates a different commodity application and a new fourth section application to cover them, the Commission properly held the matter was one for a separate proceeding.

While, ordinarily, a manufactured product carries rates no lower than the raw product from which it is made, there are exceptions to the rule. For example, this Court said with respect to rates on live stock which were higher than those on meats, (*Interstate Commerce Commission v. Chicago G. W. Ry. Co.*, 209 U.S. 108)

> "that a rate on the manufactured article is not necessarily an undue and unreasonable discrimination because it is lower than the rate on the raw material."

Other examples of lower rates on manufactured articles than on the raw materials from which they are made, that have been sanctioned by the Commission are: peanut oil v. peanuts; sheet metal work v. sheet metal; castings v. ingots; dressed poultry v. live poultry. *Houston* v. *S. P. Co.*, 49 I.C.C. 316, 318-9; *Dahlstrom Metallic Door Co.* v. *E. R.R. Co.*, 55 I.C.C. 402, 406-7; *Pacific Coast Steel Co.* v. *Director General*, 62 I.C.C. 207. In *Crown Willamette Paper Co.* v. *D. G.*, 78 I.C.C. 273, 277 and *Minnesota & Ontario Paper Co.* v. *D. G.*, 93 I.C.C. 105, 108, involving higher rates on wood pulp than on paper, the Commission stated that although it has condemned rates on raw material higher than on products manufactured therefrom, that *fact in and of itself does not demonstrate that higher rates on raw materials are unreasonable.*

The cases cited indicate that the question of relationship of whole corn rates to milling-in-transit rates must be determined in the light of all the circumstances and conditions surrounding them and, as such, is one calling for the exercise of the Commission's rate-making powers. The tariff rates in this case were published by the railroads in the exercise of managerial discretion, after consultations with various shippers (R. 299) to determine what rates would be required to secure some traffic for a line which, for lack of business, was threatened with abandonment. (R. 409) The rates were established and made available to all shippers everywhere and they have unquestionably had the effect of returning to the rails some of the traffic that had been lost to the river. In the case of whole corn it seemed to be the judgment of management, based on their experience with barge competition in this area, that a reduction in whole corn rates would not return any significant portion of the traffic lost to the river.

It will be helpful to examine the background of the competition between the barge-rail and all-rail routes to properly appraise the validity of the Board's contentions. Its chief witness, in his testimony, stressed the "tremendous investments" its members have on the river, and that its "real interest is in grain that comes in by barge." (R. 796, 797) An enormous volume of corn is received in Chicago annually by water and rail which may be shipped as whole corn under provisions of the Chicago tariffs. (R. 310)

During all the years since the Chicago interests built their own elevators on the river, and while the Belt was on a starvation diet with nothing more than a few cars of Government export corn to handle, the Chicago interests evinced no interest whatever in using its services. The railroads published rates to meet the competition of barge-rail routes but the Chicago interests have ignored them, notwithstanding there are many large and important corn processors in the Chicago district (Ex. *23*, R. 757) and many others at points throughout the East to whom Chicago could sell corn on the fourth section rates. (R. 770, 773, 782). In these circumstances it seems logical to assume that the Board's inveighing against the applicants' milling-in-transit arrangement is more for purposes of harassment than any eagerness to use whole corn rates from Belt origins. It is unreasonable to suppose that the Chicago interests, with their own river elevators in the area, and unrestricted tariffs could be persuaded to divert their tonnages from their own facilities to the Belt elevators for rail transportation simply because the railroads had provided rates on whole corn. Especially, when today shippers will pass elevators on the Belt and truck corn 20 miles further to the river to avail themselves of lower barge charges. The Board's reference to "excluding Chicago

grain interests" and "private buying reserve" is ironic and absurd.

The statement (p. 12, footnote, Board of Trade's brief) that the Commission's finding that no discrimination results from the assailed rates has nothing to do with the milling requirement is erroneous. In a single paragraph, beginning with the words "The Chicago Board of Trade and others raise certain issues, principally discrimination against whole corn by the milling in transit limitation * * *" the Commission treats with all of the Board's proposals. The Commission's finding that there is no discrimination appears in the concluding sentences of the same paragraph, as follows:

> "However, since the proposed rates are effective over Chicago, *that point has the same stature as all other corn processing points in official territory in their application.* Moreover, the routes over Kankakee are the same as they were for many years prior to the establishment of the proposed rates, and while limited in their scope as compared to making the inbound rate break on Chicago, there is no indication of undue damage to Chicago." (R. 26).

Under the circumstances it cannot be gainsaid that the finding that "Chicago has the *same stature* as all other corn processing points in official territory" is equivalent to holding that the fourth section rates "secure equality of rates as to all" and result in no favoritism, discrimination, preference or prejudice.

Since the Board of Trade's proposal involves no discrimination and whole corn rates are outside the scope of the tariffs and the carriers' application for fourth section relief, the Commission properly held that such new and extraneous matters were not proper subjects for consideration in this case.

2. Routes via Chicago are available to all shippers

While statements made in the briefs filed by appellants and the Government in this case would indicate that a member of the Board of Trade buying corn on the Belt and shipping it via Chicago to Eastern destinations would be subject to some penalties or other unequal and disadvantageous treatment, or that other shippers or localities are accorded different and more favorable treatment, there is not the slightest basis for their contentions. Routing from Kankakee and Chicago under their respective reshipping rates is the same as it has been for 35 years. The fourth section tariff made no changes from either point. (R. 320, 825) The tariffs apply equally and impartially to all.

3. Restriction of transit privileges.

In the case of transit privileges, as well as in the matter of whole corn rates and routes, there is no restriction in the fourth section tariffs that does not apply uniformly to all shippers and locations. The Board of Trade's assertion that there is discrimination is wholly unfounded. While reference is made several times in its brief (*e.g.* pp. 5, 7) to the limited number of articles in applicants' list of corn products as compared with those available under other tariffs carrying rates to and from Chicago, there are 27 such products listed in the governing tariff (R. 122) including such items as corn dust, corn meal, grits and animal and poultry feed.[6] The tariff list in-

[6] Corn flakes were casually mentioned by appellants during the hearing, but the specification for "flaked corn feed" in the tariff carries the restriction "not a cereal food preparation and not for human consumption." (R. 216)

cludes every corn product named in Ex. 63 of the Board's witness. (R. 818) The record does not indicate what additional products are listed in tariffs that are available to Chicago shippers, but if they are more comprehensive than those in the fourth section tariffs, it constitutes another advantage enjoyed by Chicago that is not afforded to any users of the fourth section rates—anywhere.

4. That the combination rates make on Kankakee and not on Chicago do not constitute discrimination against Chicago

The failure of applicants to publish the 6-cent proportional to Chicago does not constitute discrimination, as contended on p. 7 of the Board of Trade's brief. There is no more reason for adding Chicago as a rate-break point than there would be to add Danville or any other station beyond Kankakee. So long as the through charges on shipments moved via or through Chicago do not exceed those on the traffic moving via other points it has no just cause for complaint. *Schenley Industries, Inc.* v. *Akron, C. & Y. Ry. Co.*, 277 I.C.C. 699, 708; *Iron and Steel to Iowa*, 263 I.C.C. 361, 401.

The average weighted distance to Kankakee for shipments moved under these rates was 38 miles; to Chicago over the traveled route the distance would be 113 miles. While the Board of Trade would make the 6¢ apply to Chicago for the longer distance, the Mechling group of appellants and the Government are here contending that the proportional is too low—even for the short haul to Kankakee.

I. Discrimination Against Connecting Barge Carriers at Chicago.

At p. 12 of the Mechling brief, it is stated that on corn moving through Kankakee and over the circuitous route via Chicago to the East at the Kankakee reshipping rate of 49.5 cents, the New York Central would receive 13 cents as its division of such rate to Chicago, and the carrier from Chicago to New York City would receive 36.5 cents, while on a movement of corn products milled from ex-barge corn from Chicago to New York, the rail line would receive the Chicago reshipping rate of 49.5 cents. It is contended that this is a discrimination against barge carriers.

Appellants' argument overlooks the fact that Section 4 appertains to direct routes, and that the reshipping rate from Chicago and the reshipping rate from Kankakee are equal in amount. If a shipment off the Belt is sent to an Eastern destination via the circuitous route through Chicago instead of the direct routes from Kankakee, the situation is precisely the same as when ex-barge corn is consigned to the East via the circuitous route via Chicago through Kankakee. From Kankakee, the same as from Chicago, a portion of the eastern reshipping rate must be paid to a carrier or carriers for the extra carriage in such routing though out of line points. Frequent reference has been made in this case to the fact that the Chicago reshipping rate of 49.5 cents to the East on ex-barge shipments also applies via Milwaukee, Wis., and conversely the reshipping rate of 49.5 cents from Milwaukee applies via Chicago (Ex. 57) so that when circuitous routes are used it invariably presents the same divisional aspects as from Kankakee versus Chicago and Chicago versus Kankakee. It would be impossible to apportion between carriers

parties to a circuitous route the same revenue as would be received by those forming the direct route.

This witness also testified that the purpose in establishing these competitive rates was to move the corn over the direct routes east of Kankakee (R. 320-321) and substantially all of the traffic has been handled in that way.

J. Rates Do Not Violate the National Transportation Policy

It is asserted in the briefs of the Government (p. 30) and Mechling (p. 35) that the Commission erred in not taking cognizance of the National Transportation Policy (49 U.S.C. Note preceding Section 1) and failing to protect the inherent advantage of water transportation.

In former years, the Belt originated substantially all of the commercial corn produced in the vicinity of its rails. With the development of the Waterway some 20 years ago, this tonnage was diverted to the river. Between 1935 and 1957, the river movement to Chicago increased from 700,000 to 34,000,000 bushels, while the Belt's tonnage almost entirely disappeared. The competitive rates established on December 15, 1956 resulted in the return of a portion of the Belt's lost tonnage, but the tonnage handled by the barge lines increased substantially in the same period. Mechling (p. 39) says this increased barge tonnage was slight, but an increase of 91,563 tons between Dec. 15, 1956 and August 30, 1957, when competitive rates were in effect from Belt stations, can scarcely be so regarded. Stated in bushels, it amounted to 3,269,715, and was 22.7 per cent in excess of the amount handled during the corresponding period in the previous year. In its report the Commission referred to the increase in barge tonnage and found from its review of the evidence that

the all-rail rates are not lower than necessary to meet the barge competition (R. 28)

In disposing of Mechling's demand that rail rates be held up to protect barge traffic, the Commission said:

> "The barge carrier is not entitled under the act to have its rates protected from a competing mode of transportation, where, as in this instance, the railroads' efforts to secure traffic do not amount to destructive competition."

The Commission's findings fully conform to the National Transportation Policy. The Transportation Act of 1958 provides that in cases involving competition between carriers of different modes of transportation, the Commission, in determining whether a rate is lower than a maximum reasonable rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable; and that rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the National Transportation Policy declare in the Act. [49 U.S.C.A. Sec. 15(a)3]

In their brief the railroads discussed at some length the decisions upon which appellants and the Government rely, clearly distinguishing such cases and the facts and issues they presented from those in this proceeding. They also cite a number of other cases, which are apposite and fully support appellees' contentions and the lawfulness and propriety of the Commission's report and order.

By "protecting the barge lines' inherent low cost advantage" appellants (Mechling brief, p. 33) mean the complete elimination of rail competition so they and their

shippers may again monopolize not only the transportation of corn but dictate the price to be paid for it to the farmer. The evidence unmistakably reflects the advantage which barge lines now have over the Belt in attracting corn that is contiguous to the railroad. While buyers for rail shipment are confined to an area within 5 or 6 miles of rail elevators, the large Chicago grain firms with elevators along the river can reach out as far as 40 miles. Long before these rail rates were made effective, corn buyers at other inland points were trucking for long distances to the river from fields located within short distances of Belt stations, and have continued to do so since the all-rail rates were put into effect. In once such instance, off-line traffic, though originating only ¾ of a mile from the Central at Dwight was trucked (at a cost of 4 cents per bushel) past the latter's shipping facility for a distance of 20 miles in order to benefit by "the inherent low cost advantage" of barge transportation. (R. 649, 653)

Essex, although 28 miles from the river and only 7 miles from the Belt (R. 706); Wenona, with similar distances of 24 miles and 4½ miles, (R. 668); Gardner, 19 and 4½ miles, (R. 699-700); Kerner, 18 and 3 miles, respectively, (R. 657-658) are a few of a number of cases exemplifying the disadvantage of railroad transportation from this area. It was observed by appellants' counsel in the record (R. 333) that the "great preponderance" of the free corn moved all-rail originated at only three stations at the eastern end of the origin area, where trucking distances to the river are longest.

In considering the question of carrier competition, it should be noted that the mills at Kankakee and Indianapolis, which account for the great preponderance of the rail

movement involved, have nevertheless continued to receive ex-barge shipments.[7]

The Kankakee witness testified that he is buying "well over a million bushels" annually from Chicago merchant elevators. (R. 543)

Mechling's statement (p. 18) that the Commission refused to consider the disruption of the equality of competitive opportunity for all elevators in the area has no application or significance here. Prior to the publication of rail competitive rates there was no "competitive opportunity." The corn simply went to the river. The railroads were limited to the handling of a few cars of C.C.C. corn for export, the elevators on the Belt were closed and the activities of their owners restricted to local retail sales and buying corn to be trucked from farm to river elevator. What appellants seek is not "equality of

---

[7] The Indianapolis witness testified on cross-examination as follows:

"Q. Do you know about what proportion of ex-barge corn you have bought since December 15, 1956 and excluding the period that the temporary restraining order was in effect as compared to a like period in previous years?

A. I don't believe I could tell you any relationship one versus the other.

Q. So far as you know the purchase of the ex-barge billing was an isolated purchase then?

(Footnote continued)

A. No, I wouldn't say that. We bought considerably more grain which was transported by barge to Chicago. I say *we have bought considerably more grain which was transported by barge* to Chicago *than we have been able to get off the New York Central.*

Q. *Since the five and a half cent rates was in effect?*

A. *At any time, before and after.*

Q. Are you talking now about grain or corn specifically?

A. We only deal in corn." (R. 575)

competitive opportunity" but the monopoly they formerly enjoyed.

The Mechling brief (p. 40) also misstates the testimony of the Marseilles witness, who is located on the river and also on the Rock Island Railway, about 25 miles from the Belt. All of his corn is shipped on the river. (R. 684) The witness's lack of interest in rail transportation was thus stated:

> "Well, as it now, our rail rate, we don't have any interest, don't amount to anything. It is our river rate takes care of everything." (R. 685)

On cross-examination, he testified as follows:

> "Q. Did you lose any customers to New York Central elevators last year?
>
> A. Not that I know of particularly, no.
>
> Q. Was your business as good last year as it was the year before?
>
> A. I should say just about the same."
>
> • • •
>
> Q. How close to the New York Central do you get when yo uare at the most southern point of the area from which you draw corn?
>
> A. About six miles. (R. 686)

It will, therefore, be seen that the Commission's conclusion finds full support in the record.

Appellants likewise distort the testimony of Witness Noder, who operates the McNabb elevator on the Belt (not Granville, as appellants state) which is located 12 to 14 miles from the nearest river elevator. (R. 489, 495) This witness testified that during the injunction period the only rate available to him "was so high you just couldn't touch any corn going out of McNabb by rail. I know that." (R. 493) The witness's actual testimony on cross-ex-

amination, regarding a shipment of corn to the river "that was grown within a mile of the river elecator" was as follows:

> Q. Have there been other such instances (of barge shipments) in your experience before the 5½ cent rate went into effect?
>
> A. No, that was, as I remember that would be the only free corn that I had shipped in years that wasn't applied to the 5½ cent rate.
>
> Q. In other words, the 5½ cent rate except in such instances when the river services for some reason were inadequate or unable to take it has been entirely moved off the river and on to the railroad by the 5½ cent rate for free corn.
>
> A. Without it was located real close to the river, yes, I'd say you were about right.
>
> Q. Well, what do you mean by real close to the river?
>
> A. Well, I buy some corn that the hauling would prohibit moving it from its location to our elevator, *not very much, but I do get a little.*
>
> Q. And how close to the river—
>
> A. Would that corn be?
>
> Q. Yes.
>
> A. It would be raised within a mile of the river elevator." (R. 494-495)"

It is impossible to understand how appellants could distort the foregoing testimony into the statement that **"the only corn in his area going to the river elevator was grown within a mile of the river elevator."**

There is likewise no support in the record for the following statement in the Mechling brief (p. 41):

> "Many witnesses testified that farmers were slow to learn of the higher prices at the Belt elevators and slow to break established patterns. These experienced elevator operators were sure that the diversion to the

Belt would increase in the future as the 5½¢ rate became more widely known and appeared to gain more permanence with the passage of time. They knew their business and were true prophets."

No record reference is given for the language quoted above. It is contrary to the evidence in this case and does little credit to the business acumen of the corn belt farmer to say that, after the river buyers' monopoly had been broken and competitive buying by rail shippers had resulted in increasing bids for corn as much as 3 and 4¢ per bushel, and he no longer was forced to accept identical bids made by several river elevators at different locations "just about all the time" (R. 498), the farmer would have been slow to learn of the higher prices. The Cargill witness testified that people in the country "find out pretty quick where is the best place to sell corn" (R. 768) and another witness for appellants referred to advertising by a rail elevator of certain of its products in three small rural papers, in which it was also stated that his rates had been lowered. Many others testified to demands of farmers for higher prices because of the increased bids of rail buyers. (*e.g.* R. 676-677, 665, 698)

Mechling contends (p. 14) that because the barge lines are able to draw grain as far as 40 miles from the river and the railroad is restricted to corn grown within 5 or 6 miles of its stations, that trucking for the greater distances is more costly and should be taken into account here. The Commission correctly described appellants' contention as elusive logic. The principal reason why barge lines can reach out so much further for corn is because they maintain lower charges, but when the river interests extend their operations beyond the sphere of railroad solicitation activity, they are not competing with the rail rates. For

example, Granville on the Belt is 4 miles from a river port, so that the railroad elevator there can only hope to compete for corn grown for 9 miles (4 miles west and 5 miles east). For the additional 31 miles beyond the railroad area of competition the barge line has the field to itself. It meets no competition from the Kankakee branch and whatever trucking expense is incurred from such remote points has not the slightest bearing on competition from the Belt or the relief sought by the railroads in this proceeding anymore than if they were 100 or 1000 miles distant. Similarly, neither the size of river barges nor "the small operations of railroad elevators" (p. 14) is relevant or determinative of any issue presented here.

At p. 9 of the Mechling brief, it is said:

> "Witness Geekie, located at Paris, Illinois, testified that after the 5½ cent rate became effective he bought less corn from the west in the territory served by the NYC's lines to St. Louis and to Cairo (R. 518)"

The witness named made no such statement. He said he is served by the St. Louis and Cairo divisions of the NYC (which intersect at Paris.) His testimony was:

> Q. * * I understand you bought less corn from the west of you after this rate went into effect.
>
> A. "Probably less of the connecting lines to the New York Central west of us." (R. 518)

Conclusion

These appellees have a very vital interest in the outcome of this case. Without the competitive rail rates now available to them, they would again be forced to close their elevators and be deprived of the benefit of their investments and the livelihood which they afford. With the competitive rates they are in a position to carry on businesses that were established many years ago, performing the usual country elevator functions and services and buying corn for rail movement within the narrow compass which the lower barge rates permit. These rail elevator operators see trucks hauling corn past their elevators to reach the river some twenty or more miles further distant because transportation charges for barge movement are so much cheaper than the competitive rail rates.

Mechling pleads that it is a small barge line. (p. 30) These appellees are small country elevators who are threatened with the destruction of their livelihood, and they ask the protection of the law against the large Chicago grain corporations which are striving desperately to rid themselves of any and all competition by having rail rates increased. The increasing of corn bids to the farmers when rail buyers could ship at reasonable competitive rates has been particularly obnoxious and a source of irritation to the Chicago interests and the river shippers aligned with them, but there is no good reason why the Chicago interests —when bidding contemplates a transportation deduction from the Chicago base price—should charge the farmer a high "paper rate" when the transportation charge he actually pays amounts to only 2.7 cents per bushel.

The National Transportation Policy requires the Commission to preserve and maintain in full vigor all forms of transportation—not merely that by barge. Elevators on the Belt are gravely concerned with the threat of abandonment of its west end line because of the loss of its corn and other traffic to competitors. To hold that an old established railroad may not compete with barge carriers for the relatively small amount of corn grown along its rails, under the facts and circumstances here shown, would seem to be in plain violation of the National Transportation Policy.

Respectfully submitted,

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Attorney for the above-named Defendants-Appellees.

Dated January 24, 1964.

PROOF OF SERVICE.

I, Leo P. Day, Attorney for Defendants-Appellees, McNabb Grain Company, et al., and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 24th, day of January, 1964, I served copies of the foregoing Brief for Defendants-Appellees, McNabb Grain Company, et al., on the several parties by mailing copies thereof in duly addressed envelopes, with postage prepaid, as follows:

1. On the Appellant, Board of Trade of the City of Chicago, copies to its attorneys Harold E. Spencer, Esq., and Richard M. Freeman, Esq., One North LaSalle Street, Chicago 2, Illinois.

2. On the Plaintiffs-Appellants, A. L. Mechling Barge Lines, Inc., Ira Bookwalter, Cullom Cooperative Grain Company, Charles Treasure, Griswold Grain Company, and Mazon Farmers Elevator, copies to their attorneys Edward B. Hayes, Esq., and Wilbeur S. Legg, Esq., 135 South LaSalle Street, Chicago 3, Illinois.

3. On the Appellee, United States of America, copies to the Honorable Archibald Cox, Solicitor General of the United States, Department of Justice, Washington 25, D.C., and to James P. O'Brien, Esq., United States Attorney for the Northern District of Illinois, Room 450 United States Court House, Chicago, Illinois.

4. On Appellee Interstate Commerce Commission, copies to Robert W. Ginnane, Esq., its General Counsel and H. Neil Garson, Esq., its Associate General Counsel, Washington 25, D. C.

5. On the Appellee, the New York Central Railroad Company, copies to Richard J. Murphy, Esq., its attorney, Room 1225 LaSalle Street Station, Chicago, Illinois.

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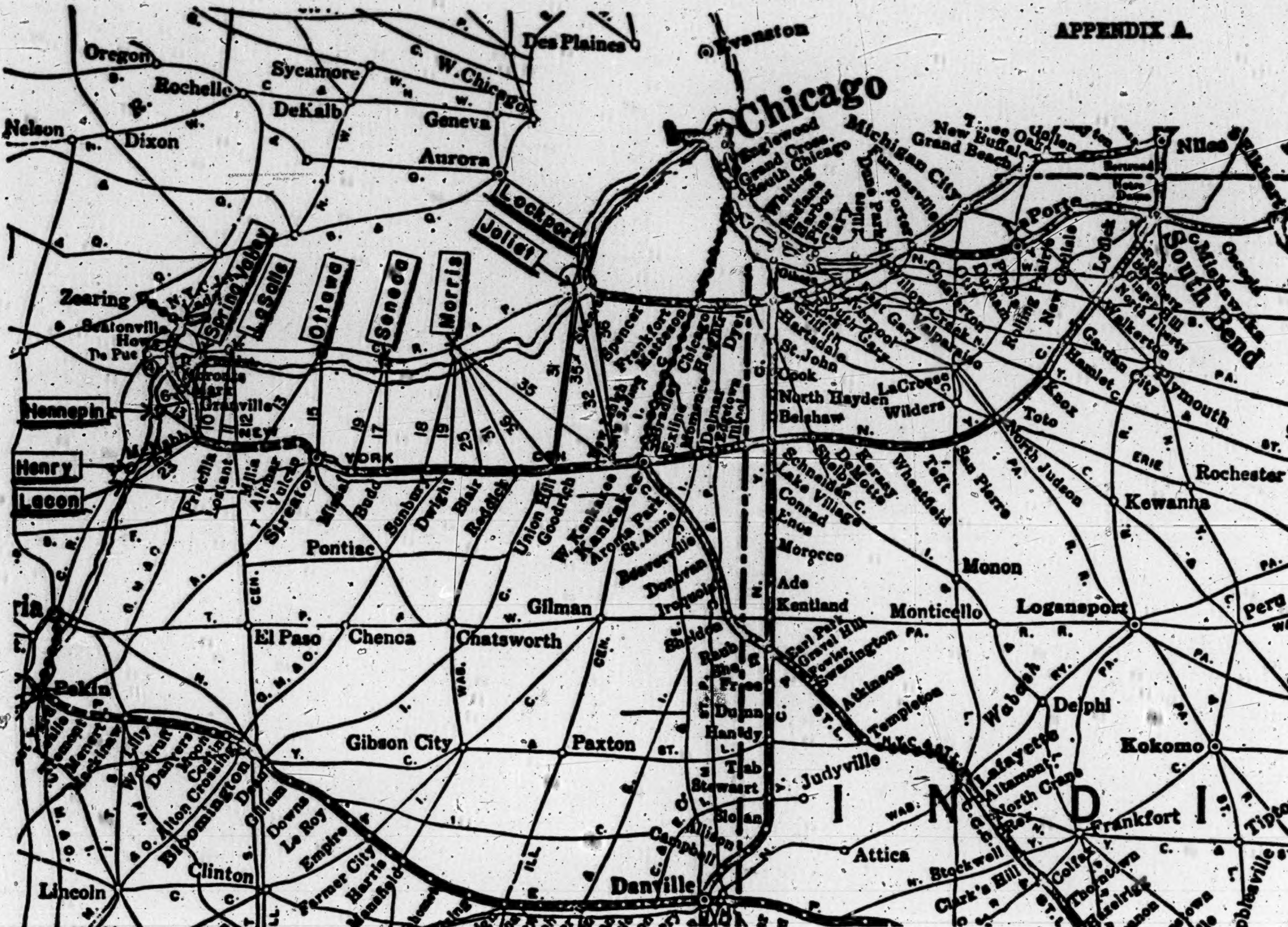
Leo P. Day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LaSalle
Ottawa
Seneca
Morris
Zearing
Hennepin
Henry
Lacon
Granville
Englewood
Grand Cross.
South Chicago
Michigan City
New Buffalo
Grand Beach
Niles
La Porte
South Bend
Mishawaka
Osceola
Walkerton
North Liberty
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Garden City
Hamlet
Knox
Toto
North Judson
Rochester
Kewanna
Valparaiso
Wheatfield
DeMotte
Schneider
Lake Village
Conrad
Enos
Morocco
Ade
Kentland
St. John
Cook
North Hayden
Belshaw
LaCrosse
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San Pierre
Tefft
Monon
Monticello
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Atkinson
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Streator
Pontiac
Dwight
Blair
Reddick
Goodrich
Union Hill
Kankakee
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Aroma Park
St. Anne
Beaverville
Donovan
Iroquois
Sheldon
Gilman
El Paso
Chenca
Chatsworth
Gibson City
Paxton
Pekin
Bloomington
Clinton
Lincoln
Downs
Le Roy
Empire
Farmer City
Mansfield
Danville
Allison
Campbell
Stewart
Hoopeston
Stockwell
Colfax
Clark's Hill
Spencer
Frankfort
Manteno
Chicago Heights
Dyer
Bradley
Exline
Dalmar
Momence
Pekin
I N D I

APPENDIX B.

National Transportation Policy, preceding 49 U.S.C. § 1.

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

Section 3(1) of Interstate Commerce Act [49 U.S.C. §3(1)]

"It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or

unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

Section 4(1) of Interstate Commerce Act [49 U.S.C. §4(1)]

"It shall be unlawful for any common carrier subject to this part or part III to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this part or part III, but this shall not be construed as authorizing any common carrier within the terms of this part or part III to charge or receive as great compensation for a shorter as for a longer distance: *Provided,* That upon application to the Commission and after investigation, such carrier, in special cases, may be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property, and the Commission may from time to time prescribe the extent to which such designated carriers may be relieved from the operation of the foregoing provisions of this section, but in exercising the authority conferred upon it in this proviso, the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and no such authorization shall be granted on account of merely potential water competition not actually in existence: *Provided further,* That any such carrier or carriers operating over a circuitous line or route may, subject only to the standards of lawfulness set forth in other provisions of this part or part III and without further authorization, meet the charges of such carrier or carriers of the same type

operating over a more direct line or route, to or from the competitive points, provided that rates so established over circuitous routes shall not be evidence on the issue of the compensatory character of rates involved in other proceedings: *And provided further*, That tariffs proposing rates subject to the provisions of this paragraph requiring Commission authorization may be filed when application is made to the Commission under the provisions hereof, and in the event such application is approved, the Commission shall permit such tariffs to become effective upon one day's notice."

Section 15a(3) of Interstate Commerce Act [49 U.S.C. §15a(3)]

"In a proceeding involving competition between carriers of different modes of transportation subject to this Act, the Commission in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act."